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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/551,420

03/16/2006

Barry W Townsend

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EXAMINER

STEWART, ALVIN J

ART UNIT

PAPER NUMBER

3738

MAIL DATE

DELIVERY MODE

10/02/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/551,420

Applicant(s)

TOWNSEND ET AL.

Examiner

Alvin J. Stewart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 17 and 19-26 is/are rejected.
- 7) ☒ Claim(s) 16 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

\*B:  
10/01/07.  
Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :3/28/07; 8/22/06;  
5/16/06; and 3/16/06, 9/30/05.

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***Election/Restrictions***

Applicant's election of Species X in the reply filed on 09/14/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 7-9, 14, 17 and 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen et al US Patent 5,653,767.

Allen et al discloses a prosthetic foot (10) having a posterior (14) and anterior (28) plantar surfaces weight bearing areas and a non-weight bearing arch shaped midportion (46) extending between the weight bearing areas, wherein the midportion is formed with a coiled spring which is compressed to absorb and expanded to return vertical load during use of the foot keel in a prosthetic foot (see Figs. 3 and 6).

Regarding claim 2, see Fig. 6 disclosing the arch shaped midportion that coiled downwardly and anteriorly (see element 50 going down).

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Claims 1-6, 8, 10-12, 14, 20-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Jang et al US Patent 6,514,293 B1.

Jang et al discloses a prosthetic foot (100) having a posterior (110) and anterior (113) plantar surfaces weight bearing areas and a non-weight bearing arch shaped midportion (106-109) extending between the weight bearing areas, wherein the midportion is formed with a coiled spring which is compressed to absorb and expanded to return vertical load during use of the foot keel in a prosthetic foot (see Fig. 4).

Claims 14, 15, 19-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Atkinson et al US Patent 2002/0087216 A1.

Atkinson et al discloses a prosthetic foot (354) having a posterior (358) and anterior (356) plantar surfaces weight bearing areas and a non-weight bearing arch shaped midportion (see arch of 354) extending between the weight bearing areas, wherein the midportion is formed with a coiled spring which is compressed to absorb and expanded to return vertical load during use of the foot keel in a prosthetic foot (see Fig. 10B).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen et al US Patent 5,653,767.

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Allen et al discloses the invention substantially as claimed. However, Allen et al does not disclose an expansion joint hole and an expansion hole.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make an expansion hole and an expansion joint hole because Applicant has not disclosed that having an expansion joint hole and an expansion hole provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with openings between each elongated members 20 & 22 because the openings between the elongated members 22 and 20 will improve biplanar motion capabilities.

Therefore, it would have been an obvious matter of design choice to modify the Allen et al reference to obtain the invention as specified in claim 13.

#### ***Allowable Subject Matter***

Claims 16, 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J. Stewart whose telephone number is 571-272-4760. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*A. Stewart*  
**ALVIN J. STEWART**  
**PRIMARY EXAMINER**  
Art Unit 3738

September 19, 2007.